

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY 8 D.C.
25 JUN 13 PM 12:06

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LARRY STEVE MELTON, LARRY S. MELTON
R & J of TENNESSEE, INC.,

Plaintiffs,

v.

No. 02-1152-B

BANK OF LEXINGTON branch of the
BANK OF FRIENDSHIP, et al.,

Defendants.

**ORDER DENYING PLAINTIFF LARRY S. MELTON'S APPLICATIONS
FOR ENTRY OF DEFAULT**

Before the Court is the May 31, 2005, applications of the pro se Plaintiff, Larry S. Melton, for entry of default under Rule 55(a), Federal Rules of Civil Procedure, against the third-party Defendants, Bradley Kirk ("Kirk") and Carter, Stanfill & Kirk, PLLC ("CS&K"). According to his motion, Melton claims that Kirk and CS&K have failed to plead or otherwise defend against his counterclaim, although ninety days has passed since the Court entered orders on February 18, 2005 (Docket Entry No. 549) and February 25, 2005 (Docket Entry No. 550) to set aside the default against these Defendants. However, on May 27, 2005, Kirk and CS&K filed a motion to dismiss the counterclaims/cross-claims of Larry S. Melton and, thus, these Defendants have in fact pled as required by Rule 55(a). Under that Rule, a default shall be entered by the clerk only

[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules...

Fed.R.Civ.P. 55(a). Since the third-party Defendants submitted their motion, which constitutes

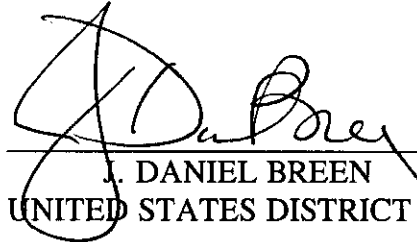
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599

a pleading under the Federal Rules, before Melton's, the basis for granting a default is no longer present against these parties.

Accordingly, the application of the pro se Plaintiff, Larry S. Melton, for default against the third-party Defendants, Bradley Kirk and Carter-Stanfill & Kirk, PLLC, is DENIED.

IT IS SO ORDERED this 7th day of June, 2005.



J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 599 in case 1:02-CV-01152 was distributed by fax, mail, or direct printing on June 13, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT